

# The Saturday Review

## of LITERATURE

EDITED BY HENRY SEIDEL CANBY

VOLUME VI

NEW YORK SATURDAY, DECEMBER 21, 1929

NUMBER 22

### Mary Baker Eddy

THE twentieth century is forgetting how hard won and how precarious is liberty. We watched with apathy or a regretful shrug the suppression of free speech in and after the war. We have accepted with indifference a censorship of literary masterpieces so stupid and so ill-directed that only pornography has profited. Unless public opinion is vigilant, Senator Bronson Cutting's amendment to the iniquitous censorship provision of the present tariff bill may be lost when the time comes for final action. The more recent case of Mr. Dakin's Life of Mary Baker Eddy is still more significant, because, not a law but extra-legal methods have been used in the attempt at suppression. It may well become a test case in American freedom.

The most competent reviewers of this life of the founder of Christian Science have in general declared it to be scholarly, accurate, and remarkably unprejudiced. It is not a belittling book; on the contrary, Mrs. Eddy appears as a great religious leader, sincere and convinced. While the author does not believe in her theology, he treats her principles with respect and is aware that only a great personality could have inspired so powerful a faith. He differs from the Christian Scientist Committee on Publications in asserting her dependence for part at least of her philosophy upon the American healer, Quinby, and in stating, upon what he regards as documentary evidence, that she used medicine, notably opium. He is accused also of having written his biography without consulting the official guardians of the church.

The charges brought against this biography are exactly equivalent to those which may be, and usually are, levelled against every historical study in a controversial field. They are exactly equivalent to the criticism of recent biographies of Washington, Lincoln, and Andrew Johnson. Has the biographer relied upon original sources? Has he interpreted his sources correctly? Is the portrait of his subject historically possible? These are legitimate questions, but beyond them such criticism cannot go, for there is no such thing as absolute truth in the history of unusual individuals like Elizabeth, Luther, Cromwell, Lincoln, or Mary Baker Eddy. Lives written of these great, disputable figures will always be subject to critical attack and difference of opinion, even when the use of documents has been scrupulously accurate. We have a right to insist upon that accuracy, we have a right to question an interpretation, but to suppress a life of Luther because it does not square with the Roman Catholic view of his career, to boycott a history of our part in the war because the American Legion does not like the book, or, with the assistance of the D. A. R., to censor out of existence a life of Washington because the author has depicted a character not entirely heroic, would be recognized instantly as a tyrannical attack upon liberty of opinion.

If an honest life of Mrs. Eddy is boycotted because a Christian Science committee does not approve of its interpretations, we have then a clear case of extra-legal means used to bring about a suppression which no principle of criticism can justify. The firm of Lord and Taylor have announced that they have been asked by the Christian Science Committee to remove Mr. Dakin's book from their counters and have done so, and Charles Scribner's Sons, the publishers, have stated that a like request has been made of booksellers throughout the country with, apparently, in the majority of cases, the same result. In short, a book which competent scholars support, and which can be accused only of

### More Joy

By SYLVIA TOWNSEND WARNER

NOT a lamb—  
Though lambs are pretty, too,  
With short fleece curled and crisp as  
rime—  
Do I choose this time.

I must have  
More joy on my green downs,  
A wilder foot, a gayer will  
To be wanton still;  
So, having sought  
My territory through  
To find where most fixed joy lay hid,  
I bear home a kid.

In these eyes  
Burns more transparent peace  
Than ever blessed the anxious brows  
Of the virtuous,

And this heart brings  
Me back the sole unflawed  
Image of that world innocent,  
Of my first intent.

### Case Study of a Liberal\*

By CHARLES E. CLARK  
Dean, University School of Law

MR. JUSTICE HOLMES is more than a distinguished lawyer and judge. He is a wise and charming philosopher. He is a flaming champion of the common man. He is the delight and joy of the law professor. (Of one of these a student wrote that "his secret pash is To raise some great white handle bars like Holmes's fine mustaches".) He is the hero and the exemplar of youthful lawyers and law students. In short, he is an American institution and more entitled to the designation than most other things so labelled. Anything which brings him to the attention of discriminating readers, as this volume does, is welcome. And perhaps the best way to accomplish this end is by the case method so famous in legal education. Here is a case study of a remarkable man from his own lips. A reprint of his pronouncements on actual cases preserves the flavor of reality, of actual contest, of the clash of interest. But, more important than all, it discloses the man himself and his fine distinctive style, rich in epigram and allusion, the style of a judicial essayist unrivalled to-day on chance by his admirer and disciple, Cardozo.

The book does have, however, the pre defects of the case method,—lack of both economy and completeness in presenting the subject. Passing over some doubts as to the sufficiency of the editor's explanatory notes and catch phrases—as "Compensation in New York" to introduce the vexing problem of the extent of admiralty jurisdiction as against state compensation acts, or "A Connecticut Divorce" to suggest the questions of interstate and foreign divorce—we find a serious omission of all his scholarly work prior to going on the bench and upon the Massachusetts bench where he served for twenty years prior to his appointment to the Federal Supreme Court. His first important scholarly work was as editor of the *American Law Review* in 1870-1873. Some articles here published grew into his famous Lectures at the Lowell Institute in Boston in 1880, which, republished in the following year as "The Common Law," made his reputation as a stylist and a legal historian on both sides of the Atlantic. This volume had, too, and has ever since had, an immense effect in stimulating legal historical studies. It is interesting to see how some of Holmes's views, originating in this tracing of the law in the ancient Year Books, were carried by him over into his decisions on the Massachusetts bench. Some of these cases are models of compact historical allusion. At times he so thoroughly convinced his associates of his historical positions, some of which seem more doubtful now than when he first stated them, that the actual decision went beyond even his views and he was compelled to dissent from the logical conclusions of his own deductions. But as he says in his first paragraph to "The Common Law": "The life of the law has not been logic; it has been experience," and mere logic alone has never appealed to him.

Again, many of his Massachusetts opinions, here omitted, are important as foreshadowing his later and more famous social opinions. His dissent in *Vegelahn v. Guntner* in 1896 was an early statement of the case against the use of injunctions in labor disputes and brought him to the attention of President Roosevelt. He was appointed to the federal

### This Week



"The Dissenting Opinion of Mr Justice Holmes."

Reviewed by CHARLES E. CLARK.

"For the Defence."

Reviewed by EDMUND PEARSON.

"Old Louisiana."

Reviewed by HERSCHEL BRICKELL.

"The Theatre."

Reviewed by DONALD OENSLAGER.

"The Wet Flanders Plain."

Reviewed by HAROLD KING.

"Adrigoolle."

Reviewed by DIARMUID C. RUSSELL.

"Look Homeward, Angel."

Reviewed by BASIL DAVENPORT.

"The Quest for Certainty."

Reviewed by RALPH BARTON PERRY.

Enough Sunset Gun.

By LEE WILSON DODD.

Common Prayer.

By CHRISTOPHER MORLEY.

"Sincerity."

Reviewed by THEODORE PURDY, JR.

### Next Week, or Later

English and American Journalism.

By JAMES TRUSLOW ADAMS.

differing in its conclusions and its use of documents from the opinion of a committee supposedly representing a sect of some 200,000 people of influence, is threatened with what amounts to a boycott. Since it is improbable that more than a few booksellers are Christian Scientists, and since their business is to sell books, no other inference can be drawn from the situation.

Well, what next? If the Roman Catholics boycott all the books of Mr. Aldous Huxley and bring pressure to bear upon the shops that sell them; if

(Continued on page 582)

\* THE DISSENTING OPINIONS OF MR. JUSTICE HOLMES. Arranged with Introductory Notes by ALFRED LIEF. With Foreword by DR. GEORGE W. KIRCHWEY. New York: The Vanguard Press. 1929. \$4.50.



court in 1902 and now at the age of eighty-eight has completed twenty-seven years of service on that tribunal.

The opinions here reprinted not only are limited to his federal service but for the most part to his judgments or dissents on social questions. His decisions on technical legal questions are ignored. His support of Justice Brandeis's continued criticism of the "fair value" theory of public utility rate review is thus omitted. Even on the issues presented it is possible that the lay reader may have difficulty in appreciating all the play of opposing forces represented in these famous cases. One should have a fairly complete knowledge of the political and social history of America during the last few decades to value Justice Holmes's services rightly. Even those who count themselves liberals with him may too easily voice their support without realizing the far-reaching nature of the problem involved.



An expression of these doubts is intended not as condemnation of the present volume but is a result of a fear lest it may not do full justice to the man and his work. So far as it goes, it is most valuable. To those who already know and appreciate him the work is especially satisfying for it brings to hand the finest of his judicial writings. We come back with delight to his pointed and profound epigrams. Thus, in a single case we find "The common law is not a brooding omnipresence in the sky but the articulate voice of some sovereign or quasi-sovereign that can be identified. . . . It always is the law of some State." And also "I recognize without hesitation that judges do and must legislate, but they do so only interstitially; they are confined from molar to molecular motions." Or again the following in a case interpreting a statute, "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

An attorney interested in this last case has said with some justice that Holmes lost further interest in the case after he had framed the epigram. Even the great Homer may nod, and, perhaps increasingly of late years, a fondness for the pithy saying and a greater interest in the social problem has led to less attention to the more technical legal questions.

Of these cases Holmes himself would say, as he said in 1900 of his work on the Massachusetts bench:

I look into my book in which I keep a docket of the decisions of the full court which fall to me to write, and find about a thousand cases. A thousand cases, many of them upon trifling or transitory matters, to represent nearly half a lifetime! A thousand cases, when one would have liked to study to the bottom and to say his say on every question which the law ever has presented, and then to go on and invent new problems which should be the test of doctrine, and then to generalize it all and write it in continuous, logical, philosophic exposition, setting forth the whole corpus with its roots in history and its justifications of expedience real or supposed!

Alas, gentlemen, that is life. I often imagine Shakespeare or Napoleon summing himself up and thinking: "Yes, I have written five thousand lines of solid gold and a good deal of padding—I, who have covered the milky way with words that outshone the stars!" "Yes, I beat the Austrians in Italy and elsewhere: I made a few brilliant campaigns, and I ended in middle life in a *cul-de-sac*—I, who had dreamed of a world monarchy and Asiatic power." We cannot live our dreams. We are lucky enough if we can give a sample of our best, and if in our hearts we can feel that it has been nobly done.



What is his social philosophy? In the Boston where he grew up he is sadly if not violently regarded as a wholly destructive influence. It has been said more mildly that his philosophy is merely negative; he does not build but pricks balloons. But what is negation to one is of course construction to another. Jefferson was a destructive force in the eyes of Marshall. Yet Jefferson's views have enough vitality to be both respected and feared, to be alive, more than a century later. Had the World War not intervened, bringing its accompanying wave of intolerance, Justice Holmes's support of the underdog might be more popular than it now is. And the hatred and harshness of the present day is sure to be succeeded by milder times when the positive nature of Holmes's philosophy will be still more apparent.

But his attitude is more than one of mere tolerance. He has, it is true, consistently supported social experimentation by the States. He says,

There is nothing I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that

an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect.

On the other hand he has steadily resisted attempts of the State and of the federal government to restrict the rights of the individual whether it be by laws aimed at free speech or by wiretapping to secure evidence of crime. After all there is a considerable air of *noblesse oblige* about his activities. It is a proper matter for the state and for the courts to act to protect the weak against the strong, to restore the bargaining balance lost by economic conditions or financial pressure, to see to it that working conditions are good and wages proper. Paternalism, even socialism, it may be termed; but after all it is the public service ideal so bitterly fought for years by Justices Brewer and Harlan and now firmly imbedded in our jurisprudence. In 1891 Brewer wrote, "The paternal theory of government is to me odious. The utmost possible liberty to the individual, and the fullest possible protection to him and his property, is both the limitation and the duty of government." And he expressed the fear that otherwise "Looking Backward" is nearer than a dream." To-day the court is upholding regulation of industries to protect the individual in a way to fulfil the worst forebodings of that grand old capitalistic judge. There are occasional setbacks, but the progress has been pretty consistently forward. In this movement Holmes has had his not inconsiderable share. In small matters he is constantly in the minority; in a larger way he is in the vanguard of the majority.

His life is and should be an inspiration. Wounded three times in the Civil War and left for dead on the field, as described in his father's famous "My Hunt for the Captain," he will be found gallantly fighting to the end. Last year upon returning from the funeral of his wife, his companion of nearly sixty years, he wrote one of his noblest dissents, that in the *Schwimmer* case, where a woman of fifty was refused citizenship because of her unwillingness to bear arms for the country. Here is what he said in one of the war-time free speech cases and this review may properly close with this revealing passage:

When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

## The Great Defender

FOR THE DEFENCE: The Life of Sir Edward Marshall Hall. By EDWARD MAJORIBANKS. New York: The Macmillan Company. 1929. \$5.

Reviewed by EDMUND PEARSON

FOR twenty years people flocked into the English law courts when the news had gone out that "Marshall Hall is defending." With most of the famous criminal cases of his period, he was in some way connected; usually, leading for the prisoner. He appeared for some notorious culprits, and a few of his clients went to the gallows. But often he satisfied the jury that the case for the Crown was not as black as it seemed. Sometimes this was by an emotional appeal; sometimes by an unexpected magic which made even the judge admit that there was another interpretation to the evidence.

American readers are apt to remember Marshall Hall as the lawyer who defended G. J. Smith, the brides-in-the-bath murderer. He was also consulted in the Crippen case; he successfully defended Wood, who was accused of the "Camden Town murder"; he appeared in the Jabez Balfour swindle; he secured the acquittal of the Frenchwoman, Mme. Fahmy, for shooting her Egyptian husband; he represented Seddon, the poisoner; and he worked in vain for Bennett, in the Yarmouth Beach murder—one of the first great newspaper sensations in the

recollection of the present generation. During the last ten or fifteen years of his life (which ended in 1927) he was the one great advocate whose aid was sought by all, as soon as they were in serious difficulties.

A strikingly handsome man, with white hair, and the profile of a hero of the films, his entrance to Court was impressive. Everybody, even the Judge, awaited him, for he suffered for many years from physical infirmities, and was permitted to conduct his cases without rising to his feet. First, came his clerk with an air cushion; then someone with a row of bottles containing smelling salts and other medicines; then an exquisite antique box, from his famous collection of silver, containing some special pill; then, his nose-spray, which his opponents declared he used to distract the jury, when the case took an unfavorable turn. At last, when all was ready, came the great man himself.

Theatricality was part of Marshall Hall. In one of his parliamentary campaigns he entertained his constituents with his skill in marksmanship, shooting cigarettes from his wife's lips. How merry would *Punch* make over an incident of that kind, if it happened in an American election! Marshall Hall had a great knowledge of precious stones, and often used it to advantage when his professional career suffered a set-back. He was a skilful mechanic, and sometimes turned his ability to good use in the Courts. He was passionately fond of shooting: he reports bags of game which are painful to read about; he even sought diversion in his garden at night, shooting bats! He frequently quarrelled with judges. He was frankly bored by the nicer technicalities of the law; never pretended to a knowledge of them, and usually called upon his junior to argue such points. His strength lay in his acquaintance with human nature, his power as a cross-examiner, his quick recognition of the weakness of his opponent's case on the facts, his daring in a desperate situation, and his ability to make an eloquent appeal to the emotions.

This book contributes something new to our knowledge of such a notorious case as that of Smith, the bath-tub murderer. It tells twenty or thirty good stories about the odd cases which came within the experience of this versatile lawyer. And it relates, at length, the history of seven or eight of the more important of these murders. One of these is an excellent detective story of the Sherlock Holmes type; it might be called "The Adventure of the Green Bicycle; or, the Curious Incident of the Dead Raven."

I suppose that I have read a dozen or more books dealing with the lives of English barristers or judges. This one is, by far, the most entertaining of them all.

## Mary Baker Eddy

(Continued from page 581)

the Methodists do the same with the novels of Mr. Hemingway; if the American Historical Association warns the booksellers to send back to the publishers the works of Herr Spengler; if the Quakers (who, like the Christian Scientists, are a power financially) serve notice upon the department stores that their trade goes elsewhere if books on military tactics are put upon the shelves—in short, if honest opinion can no longer be put into a book without arousing a powerful sect or group determined to put down a liberty which offends them, we are back again to the seventeenth century, and Milton's "Areopagitica," which Christian Scientists, who may not be aware of where their committee is leading them, are urged to read.

There is an obvious solution to the disagreeable episode which is the cause of this editorial. Lord and Taylor have announced that while they will not permit Dr. Dakin's book to be seen upon their counters, they will continue to supply copies to readers who wish to order them. Charles Scribner's Sons, the publishers, continue to advertise that the book is for sale and can be ordered from them, and also, presumably, through even the most timorous bookshop. Order a copy! It is a gesture recommended to all who believe that liberty of opinion is a priceless possession, and especially to Christian Scientists, who cannot all believe that one hundred million Americans must be protected against their will from all but official or partisan discussions of the life of Mary Baker Eddy.

The First Amendment to the Constitution which implies freedom of speech and the right to freedom in religious opinion as an American principle, is at least as sacred as the Eighteenth.